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THIRTIETH CONGRESS—SECOND SESSION.

Report No. 119.

HOUSE OF REPRESENTATIVES.

MILITARY CONTRIBUTONS.

U.S. Congress. House - Select committee on a tariff of duties in Mexico -

FEBRUARY 28, 1849.

Mr. TOOMBS, from the Select Committee to whom the subject was referred, made the following

REPORT:

The Select Committee, to whom was referred the message of the President of the United States to the House of Representatives, in answer to a resolution of the House of the 18th December, 1848, requesting information "under what law or provision of the constitution, or by what other authority," the Secretary of the Treasury, with the "sanction and approval" of the President, established "a tariff of duties in the ports of the Mexican republic during the war with Mexico," and "by what legal, constitutional, or other authority" the revenue thus derived, was "appropriated to the support of the army in Mexico," have had the same under consideration, and beg leave to submit the following report:

The resolution to which the message of the President responds submits two important questions to our consideration: 1st. By what authority the tariff of duties upon imports into the Mexican territory in our military possession during the late war with that republic was imposed: 2d. By what authority the taxes thus raised were expended by the President. We shall proceed to the enquiry in the order here stated. The President admits, in the message under consideration, that he imposed the duties, and expended the money thus raised in support of the war at his discretion, and claims the legal right to do both acts. The enquiry is, therefore, narrowed down to the single question of the rightfulness of the authority thus exercised. The President, without expressly claiming sovereignty in his own person over countries and people subdued by our arms during the continuance of the war, and without

expressly denying the power of Congress "to make rules concerning captures on land and water," yet justifies his conduct in the premises upon principles which assert the one and deny the other power. This justificationr ests, and rests alone, upon the assumption that all belligerent rights with which a state of war invests the nation may be rightfully exercised by him, after a general declaration of war, without any further legislation. This position, though broad, is not broader than is necessary to cover the powers assumed and exercised by the President. He argues with zeal, with ingenuity and with ability, that the United States "upon the declaration of war against Mexico by Congress, were entitled to all the rights which any other nation at war would have possessed." We fully concur with him in this opinion, and further we admit, that the acts for which he is now called in question were within the rightful powers of the nation, and undoubtedly belong to all sovereign States. They are attributes of sovereignty which nobody disputes. But the true question is, to what department of the government is the exercise of these powers confided? The proper decision of this question must depend, in our case, upon our own constitution. This is equally true in all constitutional governments. In despotic governments, these powers necessarily belong to the despot, for in him vests the sovereignty of his people. In England, these powers, under certain limitations, are acknowledged prerogatives of the crown. This right of demanding contributions from the enemy, which the President attempts to expand to sufficient dimensions to cover these illegal transactions, is undoubtedly a belligerent right, but it belongs to sovereigns, and has been universally exercised and sometimes regulated by them, and by them alone. Vattel relates in the same chapter from which the President quotes, that during the long wars of France, in the reign of Louis XIV., "the *sovereigns* being respectively interested in the preservation of the country, used, on the commencement of the war, to enter into treaties for regulating the contributions on a supportable footing. * * * * * * * *

"This was preventing a multitude of disorders and enormities, committed on quiet people, and generally without the least advantage to the *sovereigns* at war." This principle obtains universal acceptance among all approved publicists. The powers conferred by the people upon this government are "limited and enumerated" in a written constitution. Whatever power is claimed by the President or any other department, or all other departments of the government, must be found here or it does not exist; it must be found here or belongs "to the States respectively," or remains in abeyance with "the people." The executive can claim powers only by this grant from the people. The President refers to this source of authority, and in this connexion cites two clauses of the constitution, to wit: the one which constitutes him "commander-in-chief of the army and navy," and that which imposes the duty upon him "to take care that the laws be faithfully executed." The object and extent of these simple and appropriate grants to the executive are free fr[illegible]ambiguity, and well expressed and defined

by the language used. The President has endeavored to mistify each by combining them. The obvious meaning of these powers, taken in the connexion in which the President uses them, is, that he shall command the army to execute the laws, and nothing more; and while we agree with the President that the commander-in-chief of the army and navy would be the most proper officer "to demand and enforce" our belligerent rights, we deny his authority to "do either" until authorized by law. We must also dissent from that rule of constitutional construction which affirms that the non-exercise of a power expressly granted to the legislative branch of the government forfeits it to the executive. This result seems fairly deducible from the position assumed by the President, "that Congress prescribed no mode of conducting it, (the war,) but left the President to prosecute it according to the law of nations as his guide." We totally dissent from this reasoning; the declaration of war "without prescribing the mode of conducting it" left the President with all the men and money placed at his disposal, and with all the powers of commander-in-chief to execute the laws and none others. It left him with what the law gave him and nothing more.

The powers of the commander-in-chief are necessarily great, he conducts the whole military and naval operations of the war, can use the public force committed to him by law to the total overthrow of the power of the public enemy, and the total subjugation of hostile people, and is clothed with all the powers necessary to the discharge of these functions of his office. But these powers, in the language of Judge Story, must be restrained to such "acts as are allowed by the laws of his own country." He can overthrow, but cannot establish; he can conquer nations, but he cannot govern them when conquered.

Therefore the seizure of private property, of enemy's property within or without the United States, by way of pillage, contribution or otherwise, can be justified or not, according to the necessities of his condition or his command at the time of such seizure; but it is not lawful until authorized by Congress. The seizure of neutral property, or even the property of citizens of his own government by a commander of an army, may be, and often is, justified from his peculiar condition, but is still not lawful. War is always waged against the governing power of the enemy, therefore public property must necessarily be seized and held for the government making war. It is not always made against subjects or people. It may be that a nation making war may not always choose to exercise all of its belligerent rights, and it is certain, that no nation in modern times has enforced them all vigorously. The submission of a people is usually a protection against further hostilities, it may satisfy the vengeance of the victors; under our system, at least, it protects them against pillage until the will of the nation is declared. That will may enforce all or relax any of these belligerent rights at its pleasure. That will, under our constitution, can only be expressed by Congress. The constitution declares that "Congress shall have power" to "declare war, grant letters of marque

and reprisal, and make rules concerning captures on land and water." These grants confer the whole war power expressly upon Congress. Pillage, contributions, confiscations of enemy's property are all but modes of obtaining expletive justice, and are all equally embraced in this clause of the constitution, and confided by it to the legislature. The judgment of the Supreme Court of the United States has been rendered upon the effect of this clause of the constitution upon property found within the United States at the breaking out of war. That judgment was founded upon principles decisive against the pretensions of the President.

The case originated in an attempt to seize and confiscate the enemy's property found in the United States, at the time of the declaration of war against Great Britain, without legislation. The court conceded that "war gives the sovereign full right to take the persons and confiscate the property of the enemy *wherever* found," and the right was fully sustained by the law of nations. The simple question which presented itself in that case was, whether this right of war could be enforced without legislation? The court decided that it could not —Brown *vs.* United States, 8 Cranch, page 110.

Chief Justice Marshall, in delivering the opinion of the court, said: "This usage (the law of nations) is a guide the sovereign follows or abandons at his will. The rule, like all other precepts of morality, humanity, and even of wisdom, is addressed to the judgment of the sovereign; and, although it cannot be disregarded by him without *obloquy*, yet it may be disregarded. It is subject to infinite modifications; it is not an immutable rule of law, but depends on political considerations which may continually vary. * * * * Like all other questions of policy, it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the legislature, not of the executive or judiciary." "It appears to the court, that the power to confiscate enemy property is in the legislature, and that the legislature has not yet declared its will to confiscate enemy property which was within at the declaration of war."

The decision is conclusive against the authority of the President to exercise this belligerent right of seizing and confiscating "enemy property wherever found" without legislation, which lays at the foundation of his justification. But even conceding to the President the right to levy "contributions" upon the enemy, without the authority of Congress, the acts complained of would not fall within the concession. The power to levy contributions upon the enemy cannot include the greater power of imposing revenue laws upon conquered country. Contribution is a mere substitution for the right of pillage.

The right of pillage must be confined to enemy property; the property of our own people, and even of neutrals, is wholly exempt from its operations. The revenue laws, imposed by the President, operated upon, and were intended to operate upon, the property of our own citizens and neutrals, as well as upon "enemy property."

To impose revenue laws upon any country, is the highest act of sovereignty. To impose them upon conquered countries, is the assertion of sovereignty over them—the right to govern them "in all cases whatsoever." And to this extent the President has carried the power. Under the pretended right to take "enemy property" in the enemy's country, he has taken that of our own citizens and neutrals. Under color of a military order, avowedly based upon the right to pillage the enemy, he has usurped and exercised the powers to "lay and collect taxes, duties, imposts, and excises" in Mexico, to "regulate commerce" between that country and foreign nations, including our own; to establish navigation laws, operating out of Mexico, and imposed penalties to be executed in Mexico upon our own vessels, for refusing or neglecting in their own ports to comply with his illegal commercial regulations. All these vast powers the President deduces from the belligerent right to pillage the enemy. As if conscious that his basis is too narrow to support this gigantic superstructure, the President casts about him for props with which to support it; and, by a course of singularly infelicitous reasoning, attempts to compress these sovereign powers into mere incidents to the right of blockade. He says that he entertains "no doubt that the military right to exclude commerce altogether from the ports of the enemy, in our military occupation, *included* the minor right of admitting it under prescribed conditions." If these logical terms can, with propriety, be applied to powers and duties so distinct and independent, the right to blockade the ports and coasts of a conquered country, is the minor, and the right to govern conquests, when acquired, is the major of the proposition. The one is a mode of executing the laws, the other is the right to enact them. Blockade is a usual, ordinary means of executing the law declaring war. It belongs to him who has the conduct of hostile operations. Levying duties or imposts is exercising the power to make laws. The one results from the duty to make the conquest, the other from the right to govern it when made. The one is a sovereign power, the other an executive duty. The power of bockade is an incident of the power of capture and conquest; as a mode by depriving the enemy of means of suppport and resistance. But it is not true that the power to levy and collect money, as duties, on all property going into the enemy's country, at any point, is, or can be derived as a *minor* right to this right of blockade. The first is to *distress* and *reduce* the enemy, the latter can but operate to the enemy's *relief* by *letting in* the supply, instead of actually excluding it. Besides, conquests themselves, and the right of governing them belong to the nation. Reason and authority both maintain the truth of this proposition. What department of the government shall exercise this right of making laws for conquered countries depends upon the constitution of the victorious nation. By the British constitution, it is exercised by the king, in virtue of his prerogative, as long as the country is governed as a conquest, and then by the parliament. In despotic governments, it is necessarily exercised by the despot, in whom is concentrated all the powers of the

state. Here we have been already shown that the nation has declared in its fundamental law, that it shall be exercised by conquest.

We have thus far endeavored to demonstrate the illegality of the measures adopted by the President to raise and collect taxes in Mexico; it remains for us to consider the legality of his appropriation of the taxes thus raised. This point we think free from all difficulty or doubt. The President does not discriminate between the right to seize booty in war and the right to appropriate it, but places both rights upon the same footing, and claims them both as belligerent rights. This position is not founded in reason, nor supported by a single authority. Title by conquest is a good title to property, and when the nation has thus acquired property, it can only be divested by grant, and can only be appropriated to the public use by law. These results necessarily flow from ownership. All property taken from the enemy by the public force of the country belongs to the nation. Grotius, in concluding a long and learned enquiry into this subject, says: "The design of all this is to shew, that setting aside the civil law, and primarily, whatever is taken from the enemy in any military expedition, belongs to the prince or people who maintain the war." The late distinguished Justice Story, who dissented from the judgment given in the case of Brown *vs.* the United States, and laid down doctrines going a great way to sustain the power of the President to direct captures, without any other authority than a declaration of war, yet fully recognised the absolute property of the nation in all such captures when made. He says, "as to the point upon which Puffendorf here expresses his doubts, I suppose that no person at this day entertains any doubt. It is now clear, that all captures in war enure to the sovereign and can become private property only by his grant." These taxes or contributions, as the President terms them, as soon as levied and collected, became the property of the United States, and like other moneys belonging to the United States, could not even be appropriated to carrying on the war without the authority of Congress independent of these general principles. Express jurisdiction is given by the constitution to Congress over this species of public property; it declares, that "Congress shall have power" to make "rules concerning captures on land and water," which the Supreme Court, in the case before referred to, declares to be "an independent substantive power, not included in that of declaring war." The President also attempts to fortify himself under the act simply declaring war. This decision annihilates his implication. The President tells us this fund was applied "towards defraying the expenses of the war," but he does not tell us that it was applied "towards defraying" those "expenses of the war" which were authorized by law. If he had done so, his application of them would have been free from censure; but he claimed and exercised the power to apply them to "expenses of the war," as he and not such as the law might authorize. The imperfect and incomplete accounts rendered by him and those under his command to Congress, throw but small

light upon these transactions. How much money was collected, and how it was applied, is now and perhaps will forever remain a mystery. The system adopted by him forbid all idea of real accountability in his agents, we know that the amount accounted for stands in ludicrous contrast to the estimates of his Secretary of the Treasury.

We know that some of the funds collected have not been accounted for, and that the President now asks us for legislation to enable him to force settlements out of his agents in their illegal transactions. We learn from the current history of the times that he raised troops in Mexico without authority of law, and we presume he supported them also without its sanction. He tells us that he applied a portion of the funds to the recruiting service. The constitution gives to Congress the right "to raise and support armies," and imposes the limitation upon them that "no appropriation of money to that use shall be for a longer term than two years." If the President can levy contributions at his pleasure upon the enemy, and raise armies or even support those already raised by Congress with such contributions, then this provision of the constitution is abrogated, and popular liberty has lost one of its firmest supports. Our fathers were wisely distrustful of that great instrument of human misery and great enemy of public virtue and popular liberty, war, and therefore placed strict and salutary constitutional checks upon both its inception and continuance. How it can be begun without consulting Congress, the nation has already seen in the commencement of the Mexican war; in the exercise of this power to levy and collect taxes at will upon countries subdued by our arms, and appropriate them to the raising and supporting troops at his discretion, he has taught us how it can be continued in spite of the constitutional limitation upon appropriations for that purpose. It is the peculiar duty of the House of Representatives to defend the property and purse of the nation; they have been invaded, lawlessly invaded by the President, in the acts herein examined. We believe it is the solemn duty of Congress to take decided action for the vindication of the constitution of the country, and the rights of the people, thus violated by the President. We recommend the adoption of the following resolution, and submit the propriety of further action upon the subject to the wisdom and patriotism of the representatives of the people.

Resolved, That the powers exercised by the President of the United States, in establishing "a tariff of duties in the ports of the Mexican republic during the war with Mexico," and appropriating the "revenue thus derived" to objects other than those authorized by acts of Congress, were not warranted by the constitution and laws of the United States, but were in derogation of both.

R. TOOMBS,
GARNETT DUNCAN,
J. COLLAMER,
W. DUER.

MINORITY REPORT.

FEBRUARY 28, 1849.

Mr. MCCLERNAND, *from the Select Committee, to whom was referred the message of the President of the United States, in answer to the resolution of the House of Representatives, calling for information by what authority he had "established a tariff of duties in the ports of the Mexican republic, during the war with Mexico;" and by what authority he had "undertook to appropriate the revenue thus derived to the support of the army in Mexico, without the sanction of the tax laying and appropriating power of Congress," &c., submitted, on behalf of himself and Mr. Venable, another member of that committee, the following minority report:*

The resolution of the House, and the message of the President, which were referred to the committee, present two inquiries: First, whether the President exercised authority not conferred on him in ordering, in his military character, contributions to be levied, in the form of duties, on imports in the Mexican ports? Secondly, whether he did not exceed his authority in causing those contributions to be applied for the support of the war.

In order to a clear and satisfactory solution of these questions, it is proper to state, first, the facts of the case, and next, the law arising upon those facts. What, then, are the facts? Our land and naval forces having captured a number of the Mexican ports, the President issued his order, in duplicate, to the Secretaries of the Navy and of War, as follows:

WASHINGTON, *March* 31, 1847.

SIR: Being charged by the constitution with the prosecution of the existing war with Mexico, I deem it proper, in the exercise of an undoubted belligerent right, to order, that military contributions be levied upon the enemy in such of their ports or other places as now are, or may be hereafter, in the possession of our land and naval forces by conquest; and that the same be collected and applied towards defraying the expenses of the war. As one means of effecting this object, the blockades at such conquered ports will be raised, and they will be opened to our own commerce and that of all neutral nations, in articles not contraband of war, during our military occupation of them; and duties on tonnage and imports will be levied and collected through the agency of our military and naval officers in command at such ports, acting under orders from the War and Navy Departments.

I transmit to you herewith, for your information and guidance, a copy of a communication addressed by me to the Secretary of the Treasury on the 23d instant, instructing him to examine the existing Mexican tariff, and to report to me, for my consideration, a scale of duties which he would recommend to be levied on tonnage and imports in such conquered ports, together with such regulations as he would propose as necessary and proper, in order to carry this policy into effect, and also a copy of the report of the Secretary of the Treasury, made on the 30th instant, in answer to my communication to him. The scale of duties, and the regulations for their collection as military contributions exacted from the enemy, recommended by the Secretary of the Treasury in this report, have been approved by me.

You will, after consulting with the Secretary of War, so as to secure concert of action between the War and Navy Departments, issue the necessary orders to carry the measure proposed into immediate effect.

JAMES K. POLK.

To the SECRETARY OF THE NAVY.

[Vide Ex. Doc., 1st session 30th Congress, vol. 2, No. 8, p 558.]

In obedience to this order the Secretaries of the Navy and of War caused the measure alluded to to be carried into effect. Such are the facts. What, next, is the law arising upon those facts? This is a very delicate and important question, involving a view, not only of the laws of modern warfare, but, also, of the nature and functions of the different departments of our government. War is the forcible resort of nations to obtain that justice which is refused to pacific appeals; and in a general view, as a political subject, divides itself into two branches: First, into what is deliberative; secondly, into what is executive. The deliberative branch involves the consideration and decision of the causes for war, and properly appertains to the legislature. Hence under our constitution the "power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," is vested in Congress. And for corresponding reasons, and in like manner, the executive branch is confided to the President, who is "commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States." In short, the government of the United States has succeeded to the exercise of the original sovereignty of the several States over the subject of war, Congress being the constitutional agent of the exercise of that sovereignty, as to declaring war; and, in like manner, the President, as to waging war.

This premised, the question arises, what is included in the executive branch of war? The obvious answer is, everything that belongs to the mode of waging or of executing war allowed by the acknowledged laws of nations, and that is not prohibited by the constitution or the laws passed in pursuance thereof. Was, then, the act of the President—levying military contributions, in the form of duties on imports, in the Mexican ports—an executive

act? We insist that it was, for the following, among other reasons:

First. Because the act was essentially a means or a mode of prosecuting war; its effect was to lessen the enemy's resources and to weaken his power. In illustration, we might suppose the example of a people inhabiting an island, having a large commerce and but one port, in which all, or the principal portion, of their public revenues were collected. Of course, for an enemy to seize into his hands the revenues of this port, would be to aim a fatal, if not a decisive, blow at the means of making further resistance. Cuba, as an independent power, (having but one important port, Havana,) would afford a practical illustration of this truth.

Secondly. The act was necessarily and properly an executive act, because it sprang from an emergency, and because, too, it could only have been effected and maintained by military force.

Thirdly. The discretion to perform or not to perform the act was properly an executive discretion, because it was only the commander who could have exercised a practical judgment, upon view of this case, whether and how far the success of his arms would be promoted by the measure.

It being thus shown that the order of the President was an act falling within the executive branch of war, it remains to inquire whether it was prohibited by the laws of war. We think not. It appears to us that reason and propriety would forbid such a conclusion; certainly the examples of enlightened nations forbid it. We cite one example to illustrate all the rest—an example familiar to American citizens. On the 1st of September, 1814, the British land and naval forces, under command of General Sherbrook and Admiral Griffith, took hostile possession of Castine, in the State of Maine. On the same day, and on the 5th of the same month, the same officers issued their proclamations for the government of the place, and levying a tariff of duties on commerce coming into that port. While the place was occupied by the enemy, British goods were imported in a British vessel into the port, upon which duties were afterwards claimed by suit by the collector of customs for the United States, after the restoration of the place under the treaty of peace.* The Supreme Court of the United States, in delivering their opinion in the case, held as follows:

"Under the circumstances, we are all of opinion that the claim for duties cannot be sustained. By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over the place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors."—*United States* v. *Rice*, *4th Wheaton's Reps.*, *p.* 254.

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* Vide Williamson's History of Maine, p. 650.

Again, Justice Story, in delivering his opinion in the case of the United States *vs.* Hayward, held as follows:

"By the conquest and occupation of Castine, that territory passed under the allegiance and sovereignty of the enemy. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced, or be obligatory upon the inhabitants who remained and submitted to the conquerors. Castine, therefore, could not, strictly speaking, be deemed a port of the United States, for its sovereignty no longer extended over the place; nor, on the other hand, could it, strictly speaking, be deemed a port within the dominions of Great Britain, for it had not permanently passed under her sovereignty. The right which existed was the mere right of superior force, the allegiance was temporary, and the possession not that firm possession which gives the conqueror *plenum dominium et utile*, the complete and perfect ownership of property."—*2d vol. Gallison's Reps., pp.* 500 and 501.

In another view of the subject, it may be urged with much force that the President stands justified by virtue of his duty, under the constitution, "to take care that the laws be faithfully executed;" which, of course, involves a correlative power adequate to the purpose. Now, Congress is the law-making power under the constitution, and having enacted a recognition of the war between Mexico and the United States, and having voted men and money to enable the President to prosecute it to a speedy and successful termination, and in fact having directed him to do so, it became not only his constitutional prerogative, but also his sworn duty, to avail himself of every method of compliance approved by his judgment, permitted by the limitations already laid down.

It will scarcely be denied that the President had competent authority to enforce either a strict or modified blockade of the Mexican ports—that he may have lawfully excluded commerce altogether from those ports, or have admitted it at intervals of time, or in particular articles, in the rightful execution of war. And if so, was he not equally authorized, within the same limit, to admit commerce upon terms—upon the payment of duties? To the importer, certainly, the concession of such terms was an amelioration of the harsher rule of absolute commercial exclusion. His consent was consulted in one case, and diregarded in the other. The power exercised in one case was clearly an abatement of that exercised in the other—the one as the minor power, is included in the other as the major. Nor can there be any difference in the nature of the two powers, for it is supposed that they were called into exercise from like military motives and for like military objects. So that, upon the assumption that the importer pays the duty, as some have claimed, the argument, nevertheless, is in favor of the President.

But is it true that the importer pays the duty assessed upon imports? At this late day, it will scarcely be denied by any one acquainted with the subject, that the consumer is ultimately charged with the amount of the duty, augmented by additional charges for

interest upon capital, and for the profits of venders. Adam Smith, treating of this subject, says:

"Such taxes, in proportion to what they bring into the public treasury of the State, always *take* out or *keep* out of the *pockets* of the *people more* than almost any other *taxes*. They seem to do this in all the four different ways in which it is possible to do it." —Vol. 2, page 487.

Not only were those contributions levied upon the Mexican people—consumers, but they were, *pro tanto*, a seizure of Mexican revenues; appealing by a strong motive, both to the government and people, in favor of peace.

It is probably admitted that Mexican excises were liable to hostile seizure and use; and, if so, were not Mexican customs liable to the same treatment? The two cases are not distinguishable in principle; the military authority of the commander representing the conqueror in waging war is precisely the same in each. The true position, therefore, is that all the commerce entering Mexico, for Mexican consumption, was in truth Mexican commerce, liable to be excluded entirely, or to be admitted upon terms in the sound discretion of the commander. And so of the revenues collectable from that commerce; they, also, were in truth Mexican revenues, ultimately drawn from the Mexican people, and liable to be seized by the commander. As the commander had the right to seize the Mexican revenues in the public treasury of the enemy, so he had the same right to seize them in the hands of a Mexican collector in a captured port, or to seize them in their source, in the right to collect them himself, upon commerce coming into such a port. There can be no possible difference, in principle, between the right of the commander to collect the revenues accruing on commerce entering a port in his hostile possession, and his right to seize such revenues after they have been collected by a Mexican officer.

It has been urged that Congress possess the power, under the constitution, "to lay and collect taxes, duties, imposts and excises," and that the act of the President was in derogation of this power. Grant the premise, still the conclusion does not follow. The question here is not whether Congress possess this power, but whether they possess it in a character and for objects incompatible with the act of the President? To determine this question correctly, reference must be had to the nature of the power and to its constitutional offices. What, then, is its nature? It is essentially a deliberative and legislative power; it looks to equal, uniform and permanent operation. It is not designed merely for an emergency, but to support the government in peace and in war. It is to government what aliment is to animal life—without it government could not exist. Its operation is felt by all within the sphere of its jurisdiction—it involves the consent of all; and hence involves deliberation and legislation.

The constitution has defined the power to be strictly of a strictly legislative character, in several clauses. First, in the provision that "representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their

respective numbers," &c. Also, in the provision that "all duties, imposts and excises shall be uniform throughout the United States." Also, in the provision that "all bills for raising revenue shall originate in the House of Representatives." And, if further authority were needed, that of our revolutionary ancestors might be quoted, who proclaimed it as the cause of their separation from the mother country, that she had taxed them without their consent in parliament. It is known and admitted that the animating and moving principle of that revolution was the inseparability of taxation and representation.

The constitutional office of this power is what the nature of the power implies, and what has been already, in effect, stated. It is in the language of the constitution "to pay the debts, and provide for the common defence and general welfare of the United States," in other words to raise *revenue*; to raise revenue *generally*, for *civil* as well as *military* purposes.

What now is the distinction to be drawn from these remarks between the power exercised by the President, in his military capacity, and the power thus accorded to Congress? None, perhaps, so blind as not to see it; he who runs may read it. The one is an exigent military power, the other is an ordinary legislative power. The one is given by the constitution and is defined by the laws of war, the other is both given and defined by the constitution. The one may be exercised to subsist our own troops, or to cut off the subsistence of the enemy; the other may only be exercised to raise *revenue* for the use of the government. Under the one, Congress may "lay and collect taxes, duties, imposts, and exercises," but the constitution enjoins that those "duties, imposts, and excises shall be uniform throughout the United States," and that the bills laying them "shall originate in the House of Representatives." Under the other, the commander may exclude foreign commerce altogether from one of the enemy's ports in his possession; admit it in another upon certain terms, and in another upon still other terms. The one power is designed, in the form in which it is granted, to shield our own people from pecuniary oppression; the other is designed for a contrary effect, to oppress the enemy. The two powers, therefore, are not incompatible—they harmonize according to their respective natures and objects. In a just view they are auxiliary to each other, and may be exercised consistently within their legitimate spheres.

They who would combat the correctness of these views, must necessarily assume the proof of these two propositions. First, that the power of Congress "to lay and collect taxes, duties, imposts, and excises," may be extended to an *extra* territorial port, or in other words, that the subsequent constitutional limitation that "all duties, imposts, and excises shall be uniform *throughout* the United States," is not a virtual limitation of the operation of the foregoing power to the limits of the United States, as contradistinguished from their external territories. Secondly, admitting the truth of the foregoing proposition, in case of peace, whether the same power may be extended during actual war, to a captured port

of the enemy, held necessarily by military force? Upon these points proofs are demanded and expected.

Again, it is urged that Congress possess the "power to make rules concerning captures on land and water." This is very true. But we contend that this power does not govern the present case. A sound principle of construction requires that the constitution should be so construed as to give practical and harmonious effect to all its provisions. Upon this principle, the power of Congress to "make rules concerning captures" should be construed consistently with that of the President as "commander-in-chief," and executor of the laws. The vigor and usefulness of both powers should be preserved, they should be regarded as auxiliary powers, looking to a common object, the security of the State.

But if we accord to Congress an exclusive power to *authorize* and *control* captures in *all* cases, we necessarily, by consequence, for many authorized objects, nullify the power of the President as "commander-in-chief" and executor of the laws, and palsy the arm of self-preservation; we, in effect, expunge a part of the constitution, and at the same time overthrow the great principle of reciprocity upon which the international code rests—placing ourselves at disadvantage with every other nation in the contest of arms. Such could not have been the design of the framers of the constitution. No; the true intent and meaning of that instrument, in this particular, is to impart to Congress what would ordinarily belong to the legislature of every State—the power to make rules for the adjudication and condemnation of captures, for the disposition of prizes, and for the control of prisoners of war. The statutes of England and the United States may be adduced in support of this position. The act of Congress of April 23, 1800, provides what shall be deemed a valid prize, and how prizes shall be disposed of. If the captured vessel be of inferior force to that of the captor's, the prize is to be "equally divided between the United States and the officers and men making the capture; but if it be of superior force, the prize shall be the sole property of the captors." These regulations were dictated by considerations of public policy, and were designed to stimulate American citizens to active and zealous co-operation against the public enemy. During the last war with Great Britain, other acts were passed bearing on the same point; and, among the number, the act of June 26, 1812, authorizing the President to issue instructions to private armed vessels for the regulation of their conduct, and the act of July 6, 1812, authorizing him to make regulations for the support and exchange of prisoners of war. And then, or at any time, Congress, in virtue of the same power, might have enacted corresponding regulations for the disposition of captures made by our land forces.

To what extent these regulations may be pushed it would be difficult, if it were desirable, to define; but certainly they do not conflict, either in principle or effect, with the powers of the President as commander-in chief and executor of the laws. These powers exist, independently of Congress, under the constitution or the laws of war. True, Congress may limit the nature and objects of

war, but in the absence of any such limitation the President may exercise any right and perform any act authorized by modern warfare; he may execute the law declaring general war by besieging or storming cities, by capturing enemy property, by fighting battles, or by all these methods. He may even devastate our own frontiers to arrest the invader. "Peter the Great," in his flight before the army of Charles XII., to stop the impetuosity of a torrent which he could not withstand, destroyed his own country for about four score leagues in length. By this means the Swedes became quite spent with want and fatigue, and at Pultowa the Russian monarch reaped the fruits of his circumspection and sacrifices." Of course, the President would have an equal right to devastate the territory of the enemy. So he would have an undoubted right to destroy one of our own public vessels, as in the case of the Philadelphia, or our own military stores, to prevent their falling into the hands of the enemy, or to destroy the vessel or stores captured from the enemy to prevent their re-capture. In short, he is to judge of the methods of carrying on war; he may seize and use the enemy's cattle for the support of his army, or he may levy contributions in kind or money for the same purpose, or to weaken the enemy. As the representative of a nation in waging war he may, in the exercise of a sound discretion, do any or all these things. Vattel says:

"A country is ravaged and rendered uninhabitable, for making a barrier for covering a frontier against an enemy who cannot be stopped any other way. A hard resource, indeed! but may it not be used against an enemy when, with the same prospect, a sovereign lays waste his own provinces?" Vattel, b. 3, ch. 9, sec. 167, p. 432.

Again: "A nation has a right to deprive the enemy of his possessions and goods, of everything which may augment his forces and enable him to make war. This every one endeavors to perform in the manner most suitable to him. A nation on every opportunity lays its hands on the enemy's goods, appropriates them to itself, and, at least, in part procures an indemnification, an equivalent either for the very cause of the war, or for the expenses and losses resulting from it; a nation here does itself justice." Idem., sec. 161, p. 429.

Again: "Instead of the pillage of the country and defenceless places, a custom has been substituted more humane and more advantageous to the sovereign making war; I mean that of contributions. Whoever carries on a just war, has a right of making the enemy's country contribute to the support of the army, and towards defraying all the charges of the war." Idem., section 165, page 431.

But if Congress possessed an exclusive power to authorize and in all cases to control captures, yet they have not done so in regard to captures by our land forces; so that the power of the President in this regard was commensurate with his rights and obligations, as commander-in-chief and executor of the laws. His act

was in no wise inconsistent with any law of Congress; for Congress had not legislated upon the subject.

Again, it is urged that Congress possess the power, under the constitution, "to regulate commerce with foreign nations," &c. This also is true; but the alleged incompatibility between this power and that exercised by the President is not perceived. The remarks submitted in relation to the power of Congress "to lay and collect taxes, duties, imposts, and excises," are very much illustrative of this power. It is an ordinary civil power, designed to operate in *peace*, and to regulate the commerce of *friendly* nations. In war the power is necessarily suspended between belligerents.

Kent says: "One of the immediate and important consequences of the declaration of war is the absolute interruption and interdiction of all commercial correspondence, intercourse, and dealing, between the subjects of the two countries. The idea that any commercial intercourse or pacific dealing can lawfully subsist between the people of the powers at war, except under the clear and express sanction of the government, and without a special license, is utterly inconsistent with the new class of duties growing out of a state of war. The interdiction flows, necessarily, from the principle already stated; the state of war puts all the members of the two nations, respectively, in hostility to each other; and to suffer the individuals to carry on a friendly or commercial intercourse while the two governments were at war, would be placing the act of government, and the acts of individuals, in contradiction to each other. It would counteract the operations of war, and throw obstacles in the way of the public efforts, and lead to disorder, imbecility, and treason. Trading supposes the existence of civil contracts and relations, and a reference to courts of justice; and it is, therefore, necessarily, contradictory to a state of war. It affords, aid to the enemy in an effectual manner, by enabling the merchants of the enemy's country to support their government, and it facilitates the means of conveying intelligence and carrying on a traitorous correspondence with the enemy."

"There cannot exist, at the same time, a war for arms and a peace for commerce." Kent's Coms., vol. 1, pages 63 and 64.

But this is not all. The same authority exercised by the President had been previously exercised by his military subordinates, of distinguished experience and merit, connected with the navy and the army, upon their own responsibility. Commodore Stockton, more than seven months before the date of the order issued by the President, issued the following circular order:

"From this date, August 15th, 1846, the tonnage duties on all foreign vessels arriving in the ports of California will be fifty cents per ton.

"And the duties on all goods imported from foreign ports will be fifteen per cent. 'ad valorem,' payable in three instalments of 30, 80, and 120 days.

"R. F. STOCKTON,
"*Commander-in-chief, and Governor of the Territory of California.*"

General Scott, during the occupation of the city of Vera Cruz by our forces, issued the following general order, dated three days prior to that issued by the President:

HEAD-QUARTERS OF THE ARMY,
Camp Washington, before Vera Cruz, March 28, 1847.

As soon as the city of Vera Cruz shall be garrisoned by his brigade, Brigadier General Worth will become the temporary governor of the same.

Without disturbing the ordinary functions of the civil magistracy, as between Mexicans and Mexicans, he will establish strict police regulations for securing good order and good morals in the said city.

He will also establish a temporary and moderate tariff of duties, subject to the approval of the general-in-chief and Commodore Perry, commanding United States home squadron, on all articles imported by sea from countries other than the United States; the proceeds of said tariff to be applied to the benefit of the sick and wounded of the army, the squadron, and the indigent inhabitants of Vera Cruz.

The tariff so to be established will be continued until the instructions of the government at home shall be made known in the case.—Vide Ex. Doc., 1st session 30th Congress, vol. 7, No. 60, p. 930.

In pursuance of this order the following measure was taken, viz:

The following tariff of duties is decreed and announced for the information of all concerned.

VERA CRUZ, *April* 3, 1847.

1. All articles introduced by regularly appointed sutlers, (who will be required to exhibit to the assistant adjutant general the evidence of their appointment,) called and known as soldiers' *necessaries*, as also supplies of all kinds for officers, are *duty free;* but to avoid misapprehension or fraud, *all* articles imported by that class of persons will be entered at the custom house, and arrangement made with the collector for payment of duties on the whole cargo, subject to restitution (or freedom from duty) of such articles or the *value* thereof as may be sold to officers or soldiers. Said articles or *value* to be certified and sworn to, in a manner satisfactory to the collector, and in conformity with such regulations as he may adopt, under sanction of the commander or governor of Vera Cruz and dependencies.

2. On provisions 5 per cent. ad valorem.

On wines, cider, ale, and porter, 15 per cent., ad valorem.

On all other liquors 75 per cent., ad valorem.

On raw cotton 4 cents per pound.

All other articles of merchandize 10 per cent., ad valorem.

3. Several foreign vessels having arrived and being under detention, before the occupation, are admitted under the foregoing regu-

lations; but henceforth all foreign vessels arriving will be held subject to such duties as said vessels or cargoes would be required to pay in any port of the United States, or to exhibit, before admission, evidence of entry and payment of duties in the United States; but always subjected to the additional duty hereby imposed.

The collector of the port will draw up and submit for approval port regulations, which, when approved, will be duly imposed.

It is further decreed that foreign goods, in deposit in the United States, arriving at this port will be admitted by paying duties as per tariff of the United States, the same arriving at this port in American bottoms.

The foregoing regulations to be in force until otherwise directed by the governor for the time being, or the orders of the government of the United States.

W. J. WORTH, *Governor*,
Brevet Major General, Commanding.
WM. J. McCLUNG,
Commander U. S. Navy.

Idem. 931.

Thus, not only was the order of the President preceded and invited by similar orders from his military subordinates, but it was afterwards virtually ratified by a constitutional branch of the government, in the most solemn and authentic form. The "treaty of peace, friendship, limits, and settlement between the United States of America and the Mexican republic"—ratified on our part on the 30th of May, 1848, contains in substance the following among other stipulations:

1st. The existence of the tariff of military contributions enforced by the President in the captured ports of Mexico, as an element of treaty adjustment.

2d. The exemption of all merchandize imported into such ports while occupied by the forces of the United States, and before restoring the same from confiscation by the Mexican government.

3d. The continuance of said tariff in force for sixty days, after the signature of the treaty.

4th. The delivery of all duties collected by officers or agents of the United States, after the ratification of the treaty by the Mexican government, to that government. Vide 3d, 19th and 20th articles of treaty.

Thus, the President is sustained by the force of elementary reasoning, the precedents of other nations, the laws of war uncontravened by our constitution or municipal laws, the examples of distinguished military men, and the approval of the treaty-making power. Should not these accumulated authorities, emanating from so many commanding sources, be held conclusive?

It is known that the tariff of contributions, enforced by the President, abolished all commercial prohibitions whatsoever, except of articles contraband of war; and that it greatly reduced the rate of duties imposed by the Mexican tariff upon foreign imports. In this effect, the measure deserved the gratitude of the commercial world, rather than its resentment. It was, in effect, the remission

of taxes upon Mexican imports, whether by American citizens or neutrals. As an economical measure, it spared our government the expense of keeping up a blockade, which would have amounted to a very considerable sum. As a diplomatic measure, it opened the captured ports of Mexico to the commerce of the world upon more favorable terms, and thus avoided all disagreeable collision with neutral powers. As a measure of war, it was in exact conformity with our official declarations, that our efforts were directed against the government of Mexico, rather than against the people of Mexico. To the Mexican people the measure was in effect a boon, for it admitted to their use the necessaries and comforts of life, drawn from abroad, upon much cheaper terms than they had before been required to pay. Upon the Mexican government it fell as a heavy blow, for, by admitting commerce into the Mexican ports upon the payment of reduced duties, American and neutral merchants were induced to hasten the introduction of their goods during the operation of the measure, and thus the government was deprived of a principal branch of revenue presently, and to some extent prospectively. It is doubtful whether any measure could have been devised that would have more effectually discriminated between the people and government of Mexico; appealing to the favor of the former, and cutting off the resources of the latter.

American citizens cannot justly complain, that American commerce was placed upon the same footing of neutral commerce, for it was only by a suspension of the law of war, involving a high and responsible act, that it was liable to be admitted at all; and for the further reason, that if it had been admitted free of duty, neutral commerce would have been transferred to American vessels for importation, which would have defeated the object of the measure.

But the question now, arises, upon the second branch of the subject, whether the President did not exceed his authority in causing the military contributions levied under his order to be applied for the support of the war? This question rests upon the same principles; and is determinable by the same reasoning as that of the power to levy such contributions; and, therefore, after what has been already submitted, it is deemed unnecessary to go into a lengthened elementary discussion of it. Contributions are levied either to weaken the enemy or to strengthen ourselves, or it may be for both objects. If the former be the sole object, the commander, after seizing the contributions into his own hands, would probably pay them into the public treasury; but, if the latter be the object, of course the right to apply them accordingly, naturally and necessarily follows the right to levy them, as the end follows the means. In fact, the right to levy is a part of the right to apply—they are in truth the same right, originating in the same law of necessity, and appertaining alike to the same military agent charged with conducting war.

It is objected, however, that what is thus true under the general laws of war, is contravened by the following provisions of the constitution:

1st.—"Congress shall have power to raise and support armies, but no appropriation of money to that use shall be for a *longer* term than *two* years."

2d.—"No money shall be drawn from the treasury, but in consequence of appropriations made by law," &c.

But, what is the true meaning and effect of these provisions? The constitution declares that "Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." This grant defines the power of Congress in its whole extent, to raise taxes, either by direct or indirect means; and, also, defines the only direct and regular sources of revenue contemplated by that instrument. True, the proceeds of loans, of public lands, of captures, of fines, the dividends on stock, &c., may be paid into the treasury, but these are all rather accidental receipts forming exceptions to the general rule.

The taxes of every form thus derived, and all miscellaneous acquisitions regulated by law, must necessarily go into the treasury. The constitution demands this, in effect, in several of its provisions, and particularly in the provision declaring that, "no money shall be drawn from the treasury but in consequence of appropriations made by law," &c. And in fact, the very idea of government necessarily includes the idea of a public treasury, into which the public treasure must ordinarily be paid, and from which it must be drawn. Hence, the public moneys being once paid into the treasury, they cannot be drawn therefrom, but "in consequence of appropriations made by law," nor can they be appropriated "for a longer term than two years for the support of war; which is the correct view of the application of the constitutional limitations in question. They relate to moneys *actually in the treasury*, and not to contributions in *kind* or *money* unregulated by law, and remaining in the hands of the commander. Such contributions are not in the treasury; and therefore, cannot be drawn from it. True, when Congress have directed, in pursuance of the constitution, that the avails of captures on land," as well as "on water," shall be paid into the treasury, or when, in fact, such avails have been paid into the treasury, they can only be drawn therefrom "in consequence of appropriations made by law." Commanding authorities may be adduced in support of this general position. On the 8th of July, 1818, General Jackson reminded the Secretary of War that he had ordered a distribution of the cattle captured from the Seminoles among the chiefs and warriors of the Creek nation, and asked for the approval of his conduct. In reply, Mr. Calhoun, as Secretary of War, addressed him the following communication, dated July 28, 1818.

"Sir: I have received your letter of the 8th inst. If on examination it should turn out that Mr. Mitchell has purchased the cattle taken from the Seminoles, which you had ordered to be distributed to the upper Creeks, you will cause them to be seized, and will exercise your discretion, either to carry the order for distribution into effect, or to sell them at auction, at such place as you may

deem most advisable. If sold, the proceeds will be placed in the possession of the quartermaster's department, to be applied to current disbursments of the department. It is to be regretted that any interference has prevented this distribution which you proposed.

General Scott, too, it will be remembered, in ordering a "tariff of duties to be levied in the port of Vera Cruz," further directed that the "proceeds of said tariff" should be applied "for the benfit of the sick and wounded of the army, the squadron, and the indigent inhabitants of Vera Cruz." And thus, by a concurrence of argument and example, the double charge that the President had unlawfully drawn money from the treasury, and that he had trampled under foot the limitation of time imposed by the constitution upon appropriations for the support of war, usurping to himself an absolute power to continue a state of war as long as he might choose, and be able to do so by exactions from the enemy, is swept away. We repeat that all these idle chimeras are dispelled. Whenever Congress shall have "made rules concerning captures on land," in conformity with the constitution, the military discretion of the commander will cease to the extent that it may conflict with such rules. Law will, then, take the place of force; or, in other words, municipal law will have superseded international law. Furthermore, it is competent for Congress to repeal the laws raising men and money for the prosecution of war, or to pass laws disbanding our armies, or the President may be impeached, and, upon conviction, removed from office. Again, his term of office must expire at the end of four years, and thus, in various ways, affectual checks are imposed upon his military discretion and conduct.

But it remains to inquire whether the facts of the case do not exempt it from the operation of the objections last noticed. What are those facts? The existence of the war, which had been previously commenced by Mexico, was recognized on our part by legal enactment on the 13th May, 1846. Commodore Stockton afterwards, on the 13th August, 1846, issued his order levying a military tariff of duties in the ports of California. Afterwards, on the 28th March, 1847, General Scott issued his order, of like effect, in the port of Vera Cruz; and afterwards, on the 31st March, 1847, the President issued his order of like import. Under these various orders the sum of $3,289,737,01, exclusive of necessary charges, was levied and collected in the ports of Mexico. Now, comparing this total with the balances of appropriations for the support of the war, unexpended at the end of each quarter of each fiscal year during the war, it will be found that the latter, uniformly and largely, exceeded the former. The following authentic statement will verify this position:

Balances of appropriations for the support of the war with Mexico, unexpended at the end of each quarter, from the 1st of July, 1846, to the 1st of July, 1848.

1846. 1st July—War	$4,612,334 13		
Navy	3,212,546 74		
		$7,824,880	87
" 1st Oct.—War	15,549,846 08		
Navy	8,323,822 64		
		23,873,768	72
1847. 1st Jan.—War	8,747,506 92		
Navy	5,180,956 33		
		13,928,463	25
" 1st April—War	8,479,717 41		
Navy	4,602,764 79		
		13,082,482	20
" 1st July—War	1,327,703 06		
Navy	2,918,333 11		
		4,246,036	17
" 1st Oct.—War	7,785,244 20		
Navy	9,017,231 52		
		16,802,475	72
1848. 1st Jan.—War	6,579,290 34		
Navy	5,586,113 84		
		12,165,404	18
" 1st April—War	11,110,318 58		
Navy	4,789,449 98		
		15,899,768	56
" 1st July—War	5,619,016 92		
Navy	1,229,431 60		
		6,848,448	52

Not only were these balances always larger than the nett amount of contributions collected, but it may be affirmed as a fact that the unexpended balances of appropriations for the support of the war, at every period, from the recognition of its existence on our part to its close, were larger. Thus, if the President had applied the whole amount of contributions to the support of the war, at one time, the sum would have been still within the lowest amount of such unexpended balances, and would have been as it was, to the extent of the fact, a mere *substitution* of contributions for an equal amount of *appropriations*, leaving the latter in the treasury under the control of Congress. The following is an authentic statement in detail of military contributions collected in money in Mexico during the war, and of the application of the same.

By whom collected.	At what port.	Amount.	Amount.
Captain F. M. Diamond..	At Vera Cruz, under General Scott's order, March 28, 1847.	$287,186 58	
Same	At Vera Cruz, under War Department's order, April 3, '47.	1,986,753 44	
	Total at Vera Cruz....		$2,273,940 02
Colonel Wm. Gates.....	At Tampico.....	.....	728,976 52
Colonel Wm. Davenport..	At Matamoras	.....	330,616 89
Lt. Col. H. S. Burton....	At La Paz, California.....	2,535 35	
Dr. Allen Perry.....	.....do.....do	724 27	
			3,259 62
Cap. Joseph L. Folsom..	At San Francisco, California...	.....	40,718 42
Colonel R. B. Mason.....	At Monterey.....do.....	18,123 01	
Captain W. G. Marcy....	.....do .....do.....	4,411 01	
Talbot H. Green.....	.....do .....do.....	1,017 04	
			23,551 06
Lt. J. W. Davidson.....	At San Pedro.....do.....	.....	6,058 65
Captain F. J. Lippett....	At Santa Barbara ....do.....	.....	1,601 30
Captain W. E. Shannon..	At San Diego .....do.....	217 73	
Lieutenant Canfield.....	.....do .....do.....	159 23	
			376 96
			3,409,099 44
DEDUCT—For drawback on goods sold to officers, soldiers, sailors, and marines.....		44,289 22	
For expenses of collection		66,346 45	
For hospitals and the poor of the city paid out of the collections, made under General Scott's order.....		8,726 76	
			119,362 43
Net revenue.....		.....	3,289,737 01
There is yet due the Mexican government $25,565 23, collected subsequent to the 31st May, 1848. Of the net revenue, $3,289,737 01, there has been applied to the public service or paid over to the disbursing officers to be so applied, in the prosecution of the war			3,207,685 74
Leaving to be accounted for.....			82,051 27

The balance to be accounted for is almost entirely covered by claims for credits, to be supported by vouchers not yet produced.

This exhibit proves two important points. First, that military contributions were enforced in the following ports: Vera Cruz, Tampico, Matamoros, La Paz, San Francisco, Monterey, San Pedro, Santa Barbara, and San Diego, nine ports in all; thus beleaguering our enemy with a system of pecuniary exactions, which deprived him of a principal branch of his revenues, and forced him by a sense of his own weakness, rather than by the effusion of blood, to fair terms of peace. This was a masterly yet humane stroke of policy. Secondly, the measure exempted our own people from the payment of taxes to the amount of at least $3,289,737 01, and thus strengthened us in the contest proportionably as it weakened the enemy.

And was not this fair in war? Was it not just to ourselves? Who shall say that it would have been better for our own people to have assumed this additional burthen, and to have conquered a peace by the mere dint of the sword and the effusion of blood?

The economy of the measure may be illustrated in a single transaction. Under the treaty of peace, we became bound to pay to the government of Mexico $15,000,000, in consideration of the cession of New Mexico and California. Of this sum, $3,000,000 were to be paid at the city of Mexico, in the "gold and silver coin of Mexico," immediately after the ratification of the treaty, for the payment of which the President authorized General Butler to draw on the treasury. General Butler, however, applied contributions in his possession to the amount of $769,650, and drew on the treasury for the balance; thus making available to our government a large sum of the *requisite* coin, avoiding the risk and cost of transporting the same, and the injury to our business of a heavy drain upon the precious metals of the country.

The downfall of many of the governments of antiquity may be traced directly or indirectly to defects in their constitutions; in other words, to the want of a just division and limitation of authority among different bodies of magistracy. Sometimes the supreme power was centered in the king; sometimes in the senate; sometimes it was exercised by the people themselves in primary assemblage; but in all such cases despotism necessarily reigned, followed in the course of time by civil strife, and in the end by revolution and anarchy. So it was in Rome, after the expulsion of the Tarquins, when the senate had usurped uncontrolled sway. So it was in Sparta, when the ephors had stripped the kings of their just prerogatives. So it was in Poland, when the authority of the executive had been practically merged in that of the diet; and so it will ever be in like circumstances. To avoid these evils, the wise men who framed our constitution carefully classified its faculties, and delegated them according to their nature to different bodies of magistracy. Under the first clause of the constitution, it is declared that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Under the subsequent specifications of this general grant, it belongs to Congress to "declare war," "to raise and support armies," and appropriate "money to that use," and "to provide and maintain a navy," which is the extent of the *direct* power of Congress to create and sustain a state of war. Congress, also, may refuse supplies of men and money, may cause our armies and our navy to be disbanded or dismantled, which is probably the extent of the *direct* power of Congress to arrest war and restore peace.

This delegation of authority to originate and in a manner to control the existence of war, was wisely conceived and happily effected. It sprang, no doubt, from a spirit of popular liberty, and was designed to guard against the abuse of power in the hands of a single ruler. It has brought the momentous issues of peace and war under the practical control of the States, and the people represented in Congress, and has shorn the restless spirit of conquest and military ambition, naturally impersonated in the executive head, of the discretion and the power which have signalized the oppresions and atrocities of so many conquerors. We should rejoice at this, we

should honor and revere the memories of our ancestors who have assured us of this invaluable guaranty of our liberties and well being.

But whilst it is the design of the constitution thus to guard and check the power to make war, it is equally the design of the same instrument to impart to the agents of that power all the faculties necessary and proper to secure its successful execution. Hence we find that the framers of the constitution avoided the absurdity of the Spartan example of two kings, and of the Roman example of two consuls, and wisely constituted a single executive in whom the executive power of the government is concentrated. The constitutional provision is as follows: "The executive power shall be vested in a President of the United States of America," &c., not as "herein granted," or as *expressly* set forth in the constitution as in the case of Congress; but "the executive power"—*all* the executive power of the government—except as it may be expressly modified or abated under the constitution, "is vested in the President." Under this general grant the President would be naturally the commander-in-chief of our armies and navy, and the executor of the laws; and is so, in point of fact, by the express appointment of the constitution. He is the representative and agent of the executive will and power of the Union, and should be so from the reason and propriety of the case.

In war, particularly, there is an imperious necessity for unity of will and of action. Success depends as much, perhaps, upon promptitude as upon skill. Delay brings danger, and division is defeat. Strategy and force are the chief agents of war, and these demand secrecy and the direction of a single hand. Such is the testimony of universal experience. Hence, under the laws of war, and under our constitution, the general methods of waging war are left to the discretion of the executive. Hence the President, in the exercise of his military discretion, caused contributions to be levied, in several forms, in Mexico, and caused those contributions to be applied for the support of the war, as he had a right to do under the circumstances.

To maintain that our navy could not capture a ship, nor our armies capture a drove of cattle or a bale of clothing for their subsistence and comfort, or levy contributions in money for the same purpose, which is virtually the same thing, until Congress had declared their will by law upon the subject, is, in fact, to nullify the efficiency of our government in war, blunt the arms of our brave soldiers in the field of battle, and to entail upon our country disaster and contempt. Yet this is understood to be the extent of the objection. According to this absurd doctrine, our army would have been stayed from seizing—certainly from using the customs collected upon commerce for the support of the war, from the date of the capture of the city of Very Cruz, on the 27th of March, 1847, until the regular meeting of Congress on the 6th of December after, or at least until Congress had met under a special call. The same doctrine would have forbidden the destruction of the 4,000 stands of arms which were *captured* at Cerro Gordo. According to

this doctrine, the government has proceeded in open violation of the constitution in every instance of war in which we have been engaged, whether with foreign nations or the Indians, for in every such war captures have been made and disposed of without legal regulations, under the direction of the commander. And if such were a violation of the constitution, is it not strange that Mr. Madison, who has been called "the father of the constitution," and who filled the executive office during our last war with Great Britain, that even he should not have recommended the adoption of legal "regulations" in regard to "captures," as necessary to his authority to capture, or at all events to convert the property of the enemy, or in other words that he should have been, through ignorance or design, the principal in this guilt? And is it not equally, if not more strange, that no Congress up to this hour has deemed it necessary to enact a law upon this subject? If members of the present Congress deemed such a law necessary, they should have brought it forward; they should not have continued silent while the constitution was being mutilated, until after the tribute of the enemy had seized and appropriated, then to cry wolf! a mangled constitution! By such conduct they expose themselves to the charge of being parties to the guilt of which they complain. No, the true design of our constitution upon this subject, is to guard the country against the evils of war unnecessarily begun or unnecessarily continued, and to impart to the executive arm all the vigor and power of the Union in the prosecution of a just war. The first is the constitutional office of Congress, and of the President and Senate in the formation of treaties. The second is the constitutional office of the President as commander-in-chief. The two offices harmonize according to their objects, and should be so understood and administered as to protect the liberties and happiness of the people on the one hand, and to secure the efficiency of our government, and the success of our arms in war, on the other.

The war through which we have lately passed is destined to mark an instructive epoch in history. It has falsified the dogmas of monarchists that free governments are unequal to the trials of foreign war. It has proven that the safest reliance of a free people is not upon standing armies, but upon their own virtue, intelligence and patriotism. What are the events of this war? With a standing force of only 7,883 men, when the war broke out, at the call of the government more than 400,000 freemen leaped from the bosom of society and offered to bear arms in the cause of their country, of whom only a small proportion was received. But with inferior numbers, in less than two years, we overran an empire estimated to contain 2,500,000 square miles, deemed by many impregnable from the number and strength of its natural defences, and inhabited by seven or eight millions of people. We triumphed in the new world by our arms, in the old world by our charities dispensed among famishing millions, and at the same time the credit of our government was never better sustained, nor our people more prosperous. So grand and gigantic a spectacle was never before presented to the world. It was reserved for the superior develope-

ment of republican liberty and democratic energies. Our unshaken devotion to our country, our brilliant and uninterrupted victories, our vast and varied resources surprised while they dazzled mankind. Henceforth the consent of the world will rank us among the great powers of the earth. But let it be said in justice to President Polk that over this victorious scene his genius presided; that from his wise counsels the giant stature of this marvellous success sprung. Of him it will be said in future time that he was the organizer of American victories, as it is now said of that sturdy and incorruptible republican, Carnot, that he was the organizer of French victories. Of him it will be said that he was a chief magistrate whose patriotic career combined equally the honors of the civic crown and the laurel wreath.

War, although a scourge, has also been a civilizer of nations; sometimes it enlightens the invader, sometimes the invaded. The Greeks, and afterwards the Romans, introduced their civilization at the same time with their arms among the half savage Gauls, and when in turn these barbarians had overrun their former masters, they established among them their military hierarchy, the traces of which are still existent in the feudal system. What adversity is to individuals war is to nations, some it may crush, others it may rouse and exalt. It calls into exercise the higher and nobler qualities of nations as well as of individuals; it forces into sudden and brilliant action the arts and the virtues that are stimulated by necessity, and that are matured by the energy of distress. So it was with Greece, after the deluge of the Persian arms rolled back to its eastern bed. Then it was that Greece rose conspicuous and majestic above the rest of the civilized earth. So it was with Rome after the wars with the Volsci, the Sabines, and the Aurunci, that preceded and in a manner paved the way for the tribunate of the people, after the institution of which the Roman name and power were spread throughout the world; and so we hope it may be with Mexico, late our enemy, but now our friend. We hope that her collision with a free and enlightened nation, while it has brought evil, may also bring to her aid the quickening energies of regeneration, improvement, and a higher and progressive civilization.

JOHN A. McCLERNAND.
A. W. VENABLE.

Mr. STANTON, from the same committee, submits the following views:

The undersigned, member of the select committee, to whom was referred the message of the President in reference to the tariff of duties levied in the ports of the enemy during the late war with Mexico, dissents altogether from the report of the majority. He concurs in the conclusions and in most of the reasoning adopted by the minority. But as the constitutional questions involved are of the gravest importance, it is due to the occasion that they should be presented in their true light. It is due also to the signal ability with which the late war was conducted, and to its success and brilliant results, that the act of the President, if defensible at all, should be placed upon impregnable grounds, so that no stain shall mar the history of our triumphs. Believing that the legality of the measures sought to be condemned is susceptible of demonstration, and yet not being able to concur in the main position of the argument by which this has been attempted, the undersigned feels it to be due to himself to state the points of difference between him and those of the committee in whose conclusions he concurs. The briefest mode of doing this will be to present a succinct outline of his own views.

There is no difference of opinion in the committee or elsewhere, as to the right of the government of the United States, to exact the contributions in question. It is unnecessary, therefore, to quote from the works of writers on the law of nations, to establish a position which is not disputed. But it is insisted that this belligerent right, thus fully recognized by the law of nations, is one which properly appertains to the legislature and not to the executive. The question is thus disembarrassed of all difficulty except between the co-ordinate branches of our own government, and is narrowed down to the simple inquiry, as to the manner in which, under our constitution and laws, the government may exert a power, which, in itself, is admitted to be proper and legitimate.

In order to determine this question, it is necessary to ascertain the nature and origin of the power. Now, if the government of the United States (by which it is intended to speak of Congress) had authority, during the war, to exact these duties in the conquered ports of Mexico, that power is evidently not to be derived from the constitutional grant, "to lay and collect taxes, duties, imposts, and excises." If the power flows from this clause of the constitution, it must be conceded that the President could in no case exercise it. But there is no indication in the words of this clause themselves, or in their connexion, that they were intended to confer the power even in time of war, to tax the people of any territory other than our own. The contrary is to be plainly inferred from the closing words of the sentence, which are as follows: "but all duties, imposts, and excises shall be uniform throughout the United States." It had been provided in a preceding part of the constitution that "representatives and direct taxes shall be apportioned among the several States which may be included within this

Union, according to their respective numbers," &c. Every reference to the taxing power to be found in the instrument, seems thus to contemplate the exercise of that power only within the limits of the United States. In the very nature of things it could not well be otherwise. Our constitution itself had its origin in the great principle that taxation and representation are inseparable. And the clauses already cited, limited and guarded by the peculiar terms used, can have reference only to those internal contributions which the people of the United States, by their representatives, willingly pay for the maintenance of the government.

If the power to exact contributions of any kind in the enemy's country does not flow from the ordinary taxing powers conferred in the constitution, whence then does it come? Evidently, from the war powers contained in that instrument. The power to wage war involves this right. The usages of all nations, and the code of laws founded upon those usages, and recognised as binding by all civilized people, have sanctioned it in some form or other, from time immemorial, as an incident to the state of war. It is the power to capture the enemy's towns and territories, which implies the right to exact contributions from them. The law of nations defines and limits this right; but that law becomes a part of our constitution, inasmuch as the power to wage war is contained in it. If war be prosecuted at all, it must be in conformity with the law of nations. Our constitution even could not alter that law, because it cannot reach other nations; and the rights of war must be reciprocal. The right of resistance and defence, and the equality and mutuality of that indefeasible natural right, would, in every emergency, become superior to all human laws and all human constitutions. Hence the framers of our government have very wisely conferred upon it the unrestricted power of waging war as fully as other nations, of whatever form of government, may do.

But while our constitution, confined in its operation to a single people, cannot alter the law of nations which operates upon all, and while it has thus adopted the most unlimited war powers known and recognised as belonging to independent governments, it, nevertheless, can and does circumscribe, limit, and define the powers and duties of the respective functionaries created by it. It is not, therefore, to the law of nations that we can refer, in order to solve the present difficulty; but we must look to the provisions of the instrument by which the powers of our government are distributed among its several departments, and to any laws which may have been made in pursuance of those provisions touching the subject in question.

Congress is invested with power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" also "to raise and support armies," and "to provide and maintain a navy." On the other hand, by the constitution the President is made "commander-in-chief of the army and navy," and has imposed upon him the duty "to take care that the laws be faithfully executed." Such are the general functions of these respective constitutional agents in reference to war. Con-

gress is to make laws, and the President is to execute them, upon this as upon all other subjects within their prescribed limits.

But the legality of the President's act is to be considered in reference to the laws as they existed when his order was given, and not in reference to any laws which Congress might have passed, but which, in fact, were not enacted. The discussion does not involve the power of Congress to prescribe rules to control the President in the performance of his constitutional functions, or the validity of any restrictions which might have been imposed in the act declaring war, inasmuch as no such rules or restrictions were at any time attempted. If there be any difficulty in determining how far the President may be controlled in the prosecution of a lawful war by the authority of Congress, that difficulty does not in the least degree embarrass this investigation. The whole case stands upon the simple, broad declaration of war, and the command in that act, directing the President to prosecute it to a speedy and successful issue.

What, then, in this precise of things, were the duties and powers of the President? He was commanded by the proper constitutional authority to execute a given work. Ample means were provided; but no rules, regulations or restrictions were prescribed. In substance he was commanded to conquer and subdue Mexico, and inasmuch as he was not instructed how he should accomplish this object he was bound to adopt the best and most efficient mode. An unlimited discretion, within existing laws, (including the law of nations,) was necessarily conferred upon him.

In any other case in which the President is directed in the same general manner to perform a particular work, a similar latitude of discretion is always given. He is required, for example, to construct a ship of war. Congress has the undoubted right to order the work to be done by contract, by the hired agents and officers of the government, or by any other means whatever. But if no such provisions are adopted, and no similar regulations exist in prior laws, then the discretion of the President is unlimited as to the means to be employed and the mode adopted for the object indicated. He may build the ship of wood or of iron, and may employ steam or canvass as the motive power, as his own judgment may dictate. He is responsible only for the wisdom, efficiency and economy of his proceedings.

It cannot be otherwise with reference to the prosecution of a war. The subjugation of the enemy is to be effected by every possible means. His armies are to be overthrown, his cities captured, his territories occupied, his property seized. He is to be oppressed by every possible injury, and forced to submit to the will of the conqueror. This is war; this was the well defined meaning of that term when it was adopted into the constitution. The law of nations, based upon the acknowledged obligations of humanity and reason, is the only limitation which can control the means or the mode of effecting the objects of war. When Congress bade the President make war upon Mexico, his discretion, not being limited by the act, could possibly have no other guide or restriction. He

went forth with this law of nations in his hands as the only chart by which his movements could be directed.

It is admitted that the belligerent government may do precisely what the President did in this case, but it is insisted that the President is not the government. Yet when the government commands the President to accomplish a particular object, and does not limit his discretion as to the mode or means of doing it, it necessarily follows that the President is clothed with all the discretion which the government itself might have exercised upon the subject. The very argument that our government might have levied these taxes in the conquered ports, involves the admission that such an exaction was a legitimate and proper means of conquering the enemy; for there could be no other justification and no other object for the act. If it was a legitimate and proper means, the President was not merely authorized, he was commanded to use it. He would have been wholly unjustifiable, had he suffered any such opportunities and means to pass unemployed.

These considerations, it is believed, will show the error of the majority of the committee, when they suppose that the President's justification is placed upon the principle, as stated by them, that "*the non-exercise of a power granted to the legislative branch of the government forfeits it to the executive.* Such is not the position here assumed. Congress has power "to make rules concerning captures on land and water. But the very object of war is to make these captures—there is no other way of prosecuting it. The President is commanded to make them, and that is the end to which all his movements are directed. He must, if possible, capture the enemy's armies, his towns, and his property of all kinds. Slaughter is not the purpose of war, but is always to be avoided, if a *capture* can be accomplished without it. The bloodshed attending the capture of the city of Mexico was not the result aimed at by our arms; the capture itself was the legitimate end. If war is not to be considered as the mere wantonness of cruelty and revenge, it consists in nothing else but captures. When, therefore, the President was commanded to wage the war, his mission, after repulsing the enemy, was to capture, and nothing but to capture.

Strangely enough, however, the majority of the committee have referred to the case of Brown *vs.* the United States, in 8th Cranch, to sustain the doctrine that the President, after a declaration of war, has not the right to capture the enemy's property. But this is not merely a total misapprehension of the purposes and objects of war, but also of the true scope of the decision referred to. That decision proceeds upon the ground that the persons and property of enemies, found in our limits at the moment of the declaration of war, do not, by virtue of that declaration, become confiscated without an act of Congress. Judge Marshall, who delivered the opinion of the court, quotes from Vattel the following passage: "The sovereign can neither detain the persons nor the property of those subjects of the enemy who are within his dominions at the time of the declaration." This principle runs through the whole opinion, while, at the same time, it is clear from various sentences

that the right to capture property on the seas, or in the enemy's country, is admitted throughout. The learned judge even denied that there was any evidence that "the seizure was made under any instructions from the President of the United States." The case, therefore, does not touch any point involved in this investigation. In the very able dissenting opinion of Judge Story, in which he was sustained by one of his brethren, he says: "The opinion of my brethren seems to admit that the effect of hostilities is to confer all the rights which war confers; and it seems tacitly to concede that, by virtue of the declaration of war, the executive would have a right to seize enemies' property which should actually come within our territory during the war." The general right to make captures, therefore, was not involved in this case at all. The modern relaxation of the laws of war in favor of persons and property found in a country at the commencement of hostilities—a just relaxation, made in view of the confidence and good faith necessary to sustain commercial intercourse during peace—seems to have been the chief ground of the decision.

It is, then, clear that the executive has the right to make captures. But Congress has made no rules in reference to captures on land; and it is argued that the President can make none, because the non-exercise of the power by Congress does not confer it upon him. It is true, the President can establish no laws on the subject which would overrule the expressed will of the legislature, or which would be obligatory upon any successor. Yet, in the very fact of making captures, and preserving or disposing of them, it is impossible for him to avoid the necessity for rules. Every military order in relation to such captures constitutes a rule. And to deprive the President of this incident of making temporary rules, would be, in effect, to deprive him of the power of making captures, or, at all events, of preserving them when made. This would be nothing less than to cripple, or rather to destroy, the only effectual and legitimate means of waging war. It is not, therefore, because the non-exercise of the power by Congress forfeits it to the President, but because the failure of the legislature to provide rules imposes upon the President the unavoidable duty of controlling his subordinates by such rules for the maintenance and preservation of his conquests as will, in his judgment, best promote the accomplishment of the task he has to perform, viz: the subjugation of the enemy. There is a wide difference, however, between this duty of the President and the plenary power of Congress. The former can do nothing but what is directly involved in, and distinctly directed towards, the defeat and oppression of the enemy, comprising only so much power as is necessary fully to obey the commands of the law-making power; while, on the contrary, Congress may make rules of any other sort in reference to these conquests, and may dispose of them for any other purpose unconnected with the ultimate object of the war. The legislature might distribute these conquests among the officers and men of the army, or might place the proceeds in the treasury for general purposes; but the executive could make no such rules. All his acts and regula-

tions must be such only as are legitimate and proper for the purpose which he is commanded by the law to execute. The silence of the laws on this subject does not deprive him of discretion, but places the greater burthen upon his judgment. His powers must be adequate to his task, and his latitude of discretion equal to every emergency.

It must be very obvious, that the whole difficulty in this part of the transaction, arises from the misapprehension that the tariff levied in the Mexican ports, was not an exercise of the war power for the oppression of the enemy; but was a usurpation of the ordinary taxing powers, conferred upon Congress by the constitution. It is argued, that the ports, having fallen into the hands of our army, became ports of our territorial possessions, and, therefore, subject to the operation of the provisions of our constitution. But this position cannot be maintained. The towns and territories then held by our arms were still subject to the events of the war. It will scarcely be claimed that they were absolutely ours, in the same sense, and to the same extent that our proper territory belonged to us. Continued possession, for great length of time, would have authorized our government to treat those territories as a part of our country. To determine, in the absence of a treaty, when this absolute control should be assumed, was the province of Congress alone. Whenever Congress should think proper thus to incorporate the conquered territory into our own, the power of the President would be instantly arrested. But until this authority should be exercised, the commander-in-chief of the army could only hold those territories as parts of the enemy's country. While so held in military possession, unrestrained and uninstructed by his legislature, he not only has the right, but he cannot escape the necessity to control the intercourse of our citizens and neutrals with the inhabitants of the conquered territories. This right is essential to his own safety as well as to the maintenance of his conquest. The exigencies of the war may force him to abandon his conquests, and they would then again become what they had not entirely ceased to be, the property of the enemy. The temporary, precarious, and uncertain possession of territories conquered during war, does not create an absolute title to them, much less, under our constitution, does it incorporate them into our domain, and entitle them to the constitutional rights of our territories proper. Possession must be sanctioned by time, and strengthened by the exercise of stable power and authority; and, beyond all this, must be recognized by the direct act of Congress, before such territory can become a part of this Union.

As commander of the army, then, the President was in temporary occupation of a part of the enemy's country, held as such, and not as a part of our own country. He seized the revenues of the country, because they were the revenues of the enemy and not ours, except by the right of capture in war. His object was to oppress the enemy, whether by imposing these burthens upon his commerce or by making the taxes lighter and more productive in order to increase his means of effective warfare. He did not usurp

the taxing power of Congress, because that power extends not beyond our own limits. His design was to conquer the enemy. To defeat his armies in battle was scarcely so effective a mode of doing this as to cut off his resources in the mode adopted, and turn them to the support of our own arms. Scattered armies might again rally, or new ones be organized; but revenues sequestered could not have been replaced. You may weary the uplifted arm in the conflict, or you may wound it for the time; but if you cut the nerve which connects it with the body, or stop the blood which sustains it; you paralyze it forever.

Various objections, however, are started against the peculiar character of this measure as directed towards the subjugation of the enemy. The majority report states one of them, in substance, thus: "Blockade is one of the ordinary modes of making war; levying duties is exercising the power to make laws. One results from the duty to make conquests; the other from the right to govern them when made." If a military commander makes a conquest, he must necessarily govern it. The sovereignty is, for the time being, wrested from the enemy; and every principle of reason, humanity, and law requires that order shall be maintained, and all measures adopted necessary to hold and preserve the conquest. But this measure of taxation, though similar to the ordinary functions of government, was not adopted with any view to the exercise of such ordinary functions. It was designed to give greater force to our arms—it was intended to divert the electric current which had supported the nerves of the enemy into our own, and thus to animate and strengthen our own army while we paralyzed that of the enemy. When the bishop's palace was taken at Monterey, it was deemed legitimate to turn its batteries upon the citadel and the plaza. When Vera Cruz, Tampico, and the other ports were taken, it was equally legitimate to turn all their resources, of every kind, upon the citadel of the enemy in his capital. If any officer during the war had captured ammunition from the enemy he might have destroyed it, or what would have been still better, he might have used it against the enemy in furtherance of the general objects of the war. But if neither of these were necessary or advisable, he might have sold it and placed the proceeds in the military chest.

From the foregoing considerations follows the obvious reply to the other objection, which is one of the main points of the majority report, viz: That although the President might possibly have had authority to levy these taxes, he had no power to disburse them. So far from this proposition being true, it was the purpose for which the disbursement was made that constituted the justification of the tax itself. If the object of the tax had been merely to exercise the ordinary powers of government, or to raise money for general purposes, the President could not have levied it. If it was not designed to promote the subjugation of the enemy, and if it had not operated upon the resources of the enemy himself, which resources are legitimate prey to belligerents, then the act was wholly without authority. But if such was the end designed by

the tax, then it was the application to that end, and this application alone, which rendered it legal and proper, and within the scope of the work which, by the declaration of war, the President was commanded to execute. There were two absolute principles which could not be violated without usurpation: First, the exactions were to be from the enemy, because his property alone was subject to be seized; and, secondly, they were to be applied to objects authorized by the laws of the United States, and to none other. Within these two principles the President's discretion was unlimited, save by the laws of war, as before shown. The first of these principles is observed, if the President has used the means of collecting taxes which clearly belonged to the enemy, and has applied them to subjects legitimately taxable by him; for, in doing this, he has but availed himself of the enemy's resources and means of resistance upon the same principle that he would use any other instrument of war which he might wrest from the enemy.

It is assumed in the report of the majority, that the revenue collected was applied to objects not authorized by the laws of Congress. If this be true, such application was wholly illegal. But the undersigned has seen no evidence that any such illegal application of the fund was ever made; and, certainly, no such evidence has been before the committee.

It is again objected, however, that the regulation adopted was a relaxation of the laws of war, a diminution of the taxes existing by law in Mexico, and, therefore, to that extent, a relief to the enemy instead of an oppression. But there are two results to such a proceeding, both equally efficient as means to an end. First, to weaken the enemy, and then, to strengthen ourselves. The one was effected by cutting off the whole revenue of the enemy; the other was promoted, in an eminent degree, by reducing the taxes and rendering them doubly productive. The only offset to this advantage was the fact that goods, not contraband of war, were permitted to reach the interior of the enemy's country. But this disadvantage, if it was one at all, was still further lessened by the tendency of the measure to invite all the commerce which might possibly have entered Mexico, along the whole line of its immense territory, to the ports in our possession, by reason of the lighter duties then exacted. If these results could be accurately balanced, the advantage would be found greatly on our side. Indeed the conception of this measure was one of the most brilliant efforts exhibited during the whole war. It was a masterly stroke of genius, and tended more powerfully than anything else to bring the war to a favorable termination.

It is still further objected that these taxes did not operate upon the enemy, but upon neutrals and our own citizens. This is believed to be an erroneous conception of the effect and operation of impost duties. But whether the principle asserted, that the consumer pays the duty, be true or false, the legality of the measure is not at all affected by that consideration. The operation of any war measure, to the injury and obstruction of the commerce of neutrals or our own citizens, is no test of its validity or legality. War itself, by

force of its very existence, generally prevents or destroys most of the commerce of the belligerents. If this injury to commerce be a test, then a blockade, which is an act of admitted legality, would be still more unjustifiable, because its effects are still more disastrous. But in another point of view the objection is worse than idle and futile; it is absurd and paradoxical. The effect of the measure was to open the blockade, which might have been kept close—to admit commerce, which might have been wholly excluded. The duties demanded were voluntarily paid. They were not exacted upon a commerce which started up in ignorance that such duties were to be paid, or which expected to escape all exactions. No citizen or neutral could have demanded, as a right, to trade with the enemy upon better terms than the enemy's laws allowed. The relaxation of those laws and the raising of the blockade, instead of being ground of complaint to any one, was a matter of favor and relief to all persons desirous of engaging in commerce with the enemy.

Accordingly, so far as the undersigned knows, no complaint has ever been made by any interested party. On the contrary, the favorable opportunity thus given to trade with Mexico, was by many interested persons deemed an important advantage to their commerce. But, in truth, the act falls within the operation of another very plain principle, which has been already stated. The President has only seized an advantage which belonged to Mexico, a right necessarily attached to the possession of the ports, and incident to the very existence of commerce. They were the enemy's taxes which were seized, although they operated upon neutrals and our own citizens. The process by which they exacted, the form in which the power was exerted, were, it is true, military in every sense; but the source of this authority, its origin, and justification, was the right of Mexico herself to make the exactions. This right, wrested from Mexico by force of arms, became a legitimate instrument of further conquest in the hands of our commander, no matter upon whom it operated when thus enforced. The taxes were moneys due to the Mexican government; they were captures, therefore, as legitimate, as if they had been negotiable bonds or bank notes transferable by delivery, no matter who might have been the responsible payors—neutral citizen or enemy.

The undersigned has thus given a brief view of the argument which convinces him that the act of the President, now in question, is wholly unassailable, either in its legality or in its policy. There are various other strong considerations tending to strengthen this conviction; but as they are well and ably set forth in the report of the minority, (Messrs. McClernand and Venable,) the undersigned will not undertake to state them. He will, however, take occasion to say in conclusion, that after all which can be said in condemnation of the Executive, it must be gratifying to the country, that in the facts which give rise to this grave question of doubtful functions and disputed powers between two co-ordinate branches of the government, there has been no actual conflict of authority. On the contrary, if this measure of the President has

not been directly sanctioned by both branches of Congress, it has at least passed without any objection on their part, after having been distinctly made known to them in various official communications. This significant silence on the part of the legislature, and the fact of its abstaining from all interference with functions which it was well apprized the President was exercising, give the stongest possible indication of its conviction, that he was acting wisely and legally in his mode of executing the laws whieh had been enacted. In view of this undeniable truth, it is submitted with great deference, that to adopt the resolution proposed by the majority of the committee, will involve this House equally in the condemnation it pronounces against the President. For the representatives of the people at the last session of this Congress did, in this body, composed of a majority of opposition members, silently acquiesce for months, without attempting to arrest or to punish them, in the commission of what it is now attempted to denounce as impeachable crimes committed by the President.

All of which is respectfully submitted.

F. P. STANTON.

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